

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION No. 2401 of 1998

Shri Ulhas Raghunath Kolekar,
aged 50 years, occupation:
service, residing at 85/4 Kothrud,
Azadwadi, Pune 411 029. .. Petitioner.

V/S

1. State of Maharashtra,
2. The Director of Education,
Maharashtra State,
Central Building, Pune.
3. Shri A.R.Sonawane,
aged Adult, occupation:
service, residing at available
at Directorate of Education,
Central Building, Pune 411 001. ... Respondents

Shri A. M. Joshi for the petitioner.
Ms. P. S. Cardozo, AGP for respondent nos. 1 & 2.

CORAM: SMT. R. P. DESAI
&
SHRI A. P. DESHPANDE JJ.

DATE: 25/7/2006

ORAL JUDGMENT (Per DESHPANDE J.)

1. The petitioner has challenged the judgment and order passed

by the Maharashtra Administrative Tribunal rejecting the original application filed by the petitioner claiming time bound promotion on completion of 12 years of continuous service. Relying on a Government Resolution dated 18.4.1995 the petitioner claimed before the tribunal that he has completed 12 years of service in the post of Senior Clerk and though eligible for grant of higher pay scale, more so, when his juniors have been granted the same, the petitioner has been denied the benefit of the Government Resolution. It is obvious that the Government Resolution is intended to provide for a higher pay scale as adequate promotional avenues are not available and persons are stagnated in a given grade for a longer period of time. Before the tribunal it was not in dispute that persons junior to the petitioner have been granted promotional scale and the petitioner was denied the same. The respondent explained before the tribunal, by production of the record, that the case of the petitioner was considered by the selection committee duly constituted to examine the cases of the employees for judging their fitness for grant of the regular promotion or promotional scale on

account of completion of 12 years of continuous service. The record produced by the respondent before the tribunal was considered and the Presiding Officer found that copies of the confidential reports of the petitioner for the period 1990-91 to 1996-97 were placed before the selection committee when the selection committee had sat on 22nd October 1997 to consider the promotion of senior clerks to the post of head clerks. The first meeting of the selection committee was held in between 20th to 23rd January 1996 to consider the eligibility of the concerned senior clerks for time bound promotions to the posts of Head clerks in the Directorate of Education. In the first two meetings referred to hereinabove, the petitioner's record for 1990-91 to 1994 – 95 was considered and the petitioner was assessed as 'B', i.e. (below grade 'B') and the committee considered him unsuitable, for the time bound promotion and for regular promotion. In the third meeting the petitioner's record for the period 1992-93 to 1996-97 was considered and the petitioner was assessed as Grade 'C' and consequently unfit for promotion. On perusal of the record of the Selection Committee the Tribunal did not find any fault in

rejecting the claim of the petitioner to the higher pay scale on completion of 12 years of service. We have perused the order passed by the Tribunal.

2. Learned counsel for the petitioner submits that the confidential reports, which form the basis for denying the petitioner higher promotional scale were never communicated to the petitioner and thus the said adverse confidential reports could not have been relied upon by the authorities to deny petitioner, the promotional pay scale. As this point is nowhere considered by the tribunal in its judgment it is indicative of the fact that the said point must not have been pressed in service. Besides this we have gone through the original application filed before the Tribunal, with the assistance of the learned counsel for the petitioner. A perusal of the original application before the MAT does not indicate such a ground having been raised before it. No ground has been raised in the original application that the adverse confidential reports were never communicated to the petitioner and hence could not have been relied upon by the

Selection Committee while judging the suitability / fitness of the petitioner to claim the higher scale of pay. As the said ground about non- communication of the adverse confidential reports was not raised before the Tribunal we cannot, sitting in writ jurisdiction, for the first time, consider the said submission as it involves fact finding and adjudication of a pure question of fact.

3. No doubt, the learned counsel for the petitioner has pointed out averments made in para 24 of the writ petition, making an assertion that the petitioner had relied upon a Division Bench judgment of this court and had tried to point out that there was no communication of the adverse remarks. We reiterate that as the point was not raised in the original application filed before the M.A.T., and not considered in the impugned order, it is indicative of the fact that the ground was not pressed in service before the Tribunal. Hence we decline to consider the same.

4. In the result we do not see any merit in the petition and the

same deserves to be dismissed. We accordingly dismiss this writ petition with no order as to costs.

(SHRI A. P. DESHPANDE J.) (SMT. R. P. DESAI J)